

GOVERNMENT OF ANDHRA PRADESH

**ABSTRACT**

REVENUE DEPARTMENT -- APPEAL filed by Smt Onti Chinnammi, wife of Sri Achibabu, Kiltampalem village, S Kota Mandal, Vizianagaram district against the orders of the Joint Collector, Vizianagaram – APPEAL DISMISSED.

REVENUE (ASSIGNMENT –I) DEPARTMENT

GO.Ms.No. 1177

DATED: 16-11-2009

READ the following :-

- 1) APPEAL filed by Smt Onti Chinnammi, wife of Sri Achibabu, Kiltampalem village, S Kota Mandal, Vizianagaram district through her Counsel, Dated 6.10.2008.
- 2) Govt.Memo.No.53119/ Assn.I(2)/2008-1., Dated 29.10.2008.
- 3) Wakalat received from Sri DSVV Prasad, Advocate for the Petitioner Dated 11-01-2009
- 4) From District Collector, Vizianagaram letter Rc.No.615/ 2008 E2., Dated 16.1.2009
- 5) Interim Orders of the Hon'ble High Court in WP MP No.38083/ 2008 in WP No.25219/ 2008 filed by Onti Chinnammi,Wife of Achibabu, Dated 31-12-2008. received on 24-1-2009.
- 6) .From Sri Dasari S.V.V.S.V. Prasad, Advocate for the Petitioner, Hyderabad dated nil., received on 25-04-2009.
- 7) Govt.Memo.No. 53119 / Assn.I(2) / 2008 - 5 & 6, dated 13.05.2009, 15.06.2009, 17.07.2009 05.09.2009 and 16.9.2009.
- 8) From the Collector, Vizianagaram Rc.No.615/2008 E2.,Dated 24-09-2009 addressed to Government.
- 9) Govt.Memo.No. 53119 / Assn.I(2) / 2008, Dated : 28 .10:2009.

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**ORDER:-**

Smt Onti Chinnammi, wife of Sri Achibabu, Kiltampalem village, S Kota Mandal, Vizianagaram district filed an Appeal before the Government against the orders of the Joint Collector, Vizianagaram (1<sup>st</sup> Respondent)) Proceedings No.615/ 2008/E2., Dated 25.8.2008.

Grounds of the Appeal filed by the Petitioner :-

- I. The appellant and her family members were in enjoyment of the property in issue since her childhood and her husband was brought as illa-tom son-in-law as such the land was recorded in his name. However, at the time of granting patta it was issued in the name of the appellant who is the wife of Sri Onti Atchiababu as per the directions of the Government.
- II. It is evident from the records that it is the family members of the appellant who were in possession or occupation of the said land paying the land revenue and other dues to Government.
- III. 1<sup>st</sup> Respondent failed to see that the 4<sup>th</sup> Respondent i.e., Konna Seethamma did not establish the patta was granted to her father i.e., Mylapalli Mutyalu nor did she file the copy of the patta. Her claim is only based on the entry in the FCO Fair Adangal.
- IV. If really the contention of the 4<sup>th</sup> Respondent is true she would have obtained pattadar pass book and title deed in her name. No such documents were produced on the other hand the appellant could establish that she is granted the pattadar pass book and the title deed and the Revenue Records also establish that it is the husband of the appellant who has been in possession of the property.
- V. The 4<sup>th</sup> Respondent failed to see that in absence of the connected D.R.File of the Mylapalli Mutyalu which is not forthcoming as per the statement of the 3<sup>rd</sup> Respondent. It would be arbitrary to declare that the patta was granted to Mylapalli Mutyalu, particularly when the patta itself is not before the 1<sup>st</sup> Respondent.

- VI. The 1<sup>st</sup> respondent ought to have seen that the land was assigned to the appellant after following the due procedure and also after issuing the A-1 notice as contemplated under the Rules.
- VII. The 1<sup>st</sup> Respondent failed to take into consideration that there is no material to establish that the 4<sup>th</sup> Respondent was in occupation of the said lands.
- VIII. The 4<sup>th</sup> Respondent has never been in possession and enjoyment of the land.
- IX. The 1<sup>st</sup> Respondent failed to see that though the land was assigned in the year 2005, the 4<sup>th</sup> respondent never came forward to claim the land at any point of time before the said assignment or after the assignment and it is only when the compensation was being disbursed she came forward with the present revision.

The Counsel for the Appellant has therefore requested to set aside the orders passed by the 1<sup>st</sup> Respondent in proceedings No.Rc.No.615/ 2008/E2., Dated 25.8.2008 in the interest of justice or else the appellant will suffer heavily.

The District Collector, Vizianagaram was requested to offer his detailed parawise remarks on the Appeal filed by the Petitioner.

In the reference 4<sup>th</sup> read above, the District Collector, Vizianagaram has submitted a report to Government.

Brief facts of the case as per the report of the Collector, Vizianagaram.

During the year 2005, the then MRO, S.Kota in a special drive of distribution of Government lands conducted physical verification and noticed that the land covered by Sy.No.198/1 measuring Ac.4-16 cts of Kilthampalem village is under the active possession and enjoyment of Onti Atchibabu which was originally assigned to Mylapalli Mutyalu who has not cultivated the land and violated the grant. Hence the MRO regularized the assignment in favour of Onti Chinnammi.

At this juncture, the petitioner Smt Kona Seethamma, Wife of Simhachalam resident of Zeroity Kumaram village, S.Kota Mandal has filed a petition before the Joint Collector, Vizianagaram on 20.2.2008 stating that the land covered by S.NO.198/1 measuring Ac.4-16 Cts of dry land in Kilthampalem village was assigned in favour of Sri Mylapalli Mutyalu and was in possession and enjoyment of the said land till his death. After his death his daughter Kona Seethamma being the daughter and sole heir of the assignee has been in possession and enjoyment of the said land and requested for cancellation of the assignment Patta issued in favour of Onti Chinnammi Wife of Achibabu (present appellant herein) stating that the Patta was issued under mistake of fact.

The Ex-gratia has already been paid by the RDO, Vizianagaram in favour of Respondent No.3 i.e., Onti Chinnammi.

While so, Smt Kona Seethamma filed WP No.13717/ 2008 questioning the inaction of the Joint Collector, Vizianagaram in not passing any order on the petitioners revision petition dated 20.2.2008 in not canceling the assignment.

The Joint collector, Vizianagaram heard the case and issued proceedings dated 25-08-2008 wherein he observed that knowing that there is dispute as regards to the title and there is a counter claim for exgratia by the original assignee and the Revision Petitioner against assignment is pending, receipt of exgratia by 3<sup>rd</sup> Respondent i.e. Onti Chinnammi is totally illegal. In view of the facts, it was ordered that, the assignment claimed to have been made in favour of 3<sup>rd</sup> Respondent (Onti Chinnammi) was cancelled under mistake of Fact under BSO 15 (18) read with GO Ms.No.912, Revenue (B) Dept, dated 2.8.1985 and it is further ordered that the 3<sup>rd</sup> Respondent (Onti Chinnammi) must immediately repay the amount paid to her and further that the same shall be paid to the petitioner as the assignment made in favour of the petitioner was not cancelled and as per the Act 9 of 1977, the restoration of the assigned land found to be in occupation of others in favour of the assignee / the legal heirs is obligatory as per Section 4 (1) (b) of the act on the part of the Tahsildar.

Aggrieved by the orders of Joint Collector, Smt Onti Chinnammi has filed Appeal before the Government along with the Stay petition. Subsequently she filed W.P.No.25219/ 2008 before the Hon'ble High Court for directions to the Respondents not to arrest or not to take any coercive steps against the petitioner by suspending the order of the 2<sup>nd</sup> Respondent (Joint Collector, Vizianagaram) Proceedings Rc.No.615/2008 E2, dated 25.08.2008 in pending disposal of the WP.

The Hon'ble High Court in its interim order dated 31-12-2008 in WPMP No.38083/ 2008 in WP No.25219/ 2008 filed by Smt Onti Chinnammim,Wife of Achibabu have passed the following order:-

*The specific case of the petitioner is that against the order of the 2<sup>nd</sup> respondent, dated 25.8.2008, she preferred an appeal along with an application for stay and the same is pending before the 1<sup>st</sup> Respondent.*

*It is alleged that pending the said appeal, the respondents are seeking to implement the order of the 2<sup>nd</sup> Respondent, dated 25.8.2008 and there is threat of arrest.*

*In the circumstances, there shall be a direction to the 1<sup>st</sup> Respondent to dispose of the application for stay filed by the petitioner in her appeal against the order of the 2<sup>nd</sup> respondent dated 25.8.2008 within a period of two weeks from the date of receipt of this order.*

*In the meanwhile, there shall be a direction to respondents 2 to 4 not to take any coercive steps against the petitioner on the basis of the order of the 2<sup>nd</sup> Respondent, dated 25.8.2008 for a period of four weeks from today,."*

The Hon'ble High Court have passed final orders in WP No.25219/ 2008 Dated 06-02-2009 and observed that the petitioner and the 5<sup>th</sup> Respondent shall await the outcome of the revision pending before the 1<sup>st</sup> Respondent, and they shall work out their remedies depending on the outcome thereof. There shall be no order as to costs.

Government have examined the Appeal filed by the petitioner Smt Onti Chinnammi, and the report of the Collector, Vizianagaram, the request of the petitioner for grant of stay of impugned orders was rejected by the Government vide in Memo.No.53119/ Assn.I(2)/2008, Dated 28.2.2009.

Case called for hearing on 28-03-2009, 25-04-2009,27-06-2009, 25-07-2009, 5-09-2009, 24-10-2009, and finally on 31-10-2009.

Advocate for the Appellant was present and argued the case. The Advocate for Appellant has also filed Written arguments.

The Superintendent of the Collector's Office, Vizianagaram was present and appraised the facts of the case.

Government have examined the Appeal filed by the petitioner and the written arguments submitted by the Advocate for the Appellant, and also the report of the Collector, Vizianagaram.

After perusal of the records, it was observed that as regards to the assignment claimed to have been made in favour of the 3<sup>rd</sup> Respondent (present petitioner), it is questionable because the signature in the office copy of the D-Form patta and the fair copy of the D-Form patta available are totally different from those of the same MRO in the Office copies of 4 other documents to persons assigned and on the same date 19-08-2005. It was also reported that the report of the Tahsildar is doubtful as he himself states that it was assigned in favour of Onti Achibabu and on the other hand it was assigned in favour of Onti Chinnammi (Menalludu) that too on the same date. Further subsequent assignment has to be made only after cancellation of the earlier assignment following the due procedure.

It was further observed that even though the Smt Kona Seethamma is making agitation, even as per the record available, from 2007 onwards as per the grievance cell petitions filed in the Collectorate and as per the acknowledgements filed, the petitioner has made representations/ R.P. to the then Joint Collector on 02.02.2008 and on 20.2.2008, the exgratia was paid to the 3<sup>rd</sup> Respondent (i.e., Smt Onti Chinnammi) on 11.4.2008 which makes it absolutely clear that it has been done intentionally and with full knowledge of consequences. While the revision is pending and the fact that the land was earlier assigned is established beyond doubt, payment of ex-gratia even without waiting for the outcome of the Revision Petition cannot be justified in any manner.

In view of the observations made by the Government, the Appeal petition filed by Smt Onti Chinnammi Wife of Sri Achibabu, R/o Karakavanijoru, H/o Kilthampalem village, S.Kota Mandal, Vizianagaram is hereby dismissed.

The District Collector, Vizianagaram is directed to take immediate necessary action to recover the exgraita from the petitioner Smt Onti Chinnammi and take further necessary action to avoid further legal complications if any.

The original record bearing Rc.No.615/ 2008/E2., containing 159 Pages of CF (Photo copies) is herewith returned to the District Collector, Vizianagaram, and he is requested to acknowledge the receipt of the original records immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

RAJESHWAR TIWARI  
SECRETARY TO GOVERNMENT

To

The District Collector, Vizianagaram (with Original records.).

Smt Onti Chinnammi Wife of Sri Achibabu,

R/o Karakavanijoru, H/o Kilthampalem village, S.Kota Mandal, Vizianagaram

Sri D.S.V.V.S.V. Prasad, Advocate for the Appellant

Plot No.320, Sri Shiridi Sai Nivas, Tejaswi Nagar Colony, Attapur, Hyderabad-64

Copy to the Govt. Pleader for Revenue (Assignments)

High Court of AP , Hyderabad

(with a request to furnish a copy of the orders before the Hon'ble High Court for perusal with reference .to WP No.25219/2008).

Copy to the PS to Minister for Revenue

Copy to the PS to Secretary to Govt.(RT), Revenue department.

Copy to the Stock-file

//FORWARDED::BY ORDER//

SECTION OFFICER